(Testimony of Henry Lester Pineda.)

have to be an expert to find out where they are coming from.

The Court: Let the question and answer stand. Proceed.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Immediately after this lot of eggs was [653] placed on the floor of the plant did you observe anyone in the vicinty of those eggs?

A. Yes, Mr. Goddard.

Q. What was done with those eggs?

Mr. Faulkner: Same objection in respect to these eggs as with the others.

The Court: What eggs are these?

Mr. Hippeli: This is the second lot that has been delivered.

The Court: You may answer.

Mr. Faulkner: Exception.

A. I did the same thing I did with the first ones: opened them up, and this time instead of putting them three high I started putting them two high and spread them out a little more as we were first ordered to do.

Mr. Hippeli: Q. Who directed you to do that?

A. Mr. Goddard.

Q. Do you recall whether Colonel Hand was called to grade the second lot of eggs that was on the warehouse floor?

A. Well, he came down to inspect that lot.

Q. When?

A. About three or four days later.

(Testimony of Henry Lester Pineda.)

Q. Who was present at the time he came in to inspect them?

A. Mr. Menges, Mr. Nix and Mr. Goddard.

Q. What was done at this time?

A. The same thing, the same thing we did before.

Mr. Faulkner: We will ask that that go out as not responsive, your Honor.

Mr. Hippeli: I submit that it is responsive.

The Court: I will allow him to finish his answer.

Mr. Hippeli: Q. Will you proceed?

A. We took out the cases of eggs that we had in the cooler, that had been the first cases that Mr. Hand had seen, and placed them in the same position we had them the first time, and after we had candled these cases of eggs, this second storage cases of eggs we placed them in the cooler.

Q. Which cases did Colonel Hand inspect?

A. He inspected the same ones he inspected the first time—maybe not the same eggs but the same lot.

Q. Were they a lot of fresh eggs?

A. A lot of fresh eggs.

Q. What lot of eggs did Colonel Hand stamp?

A. He stamped the second shipment we got from the storage house.

Q. What was done with the lot of fresh eggs while he was stamping the first lot? Where were they placed in the warehouse?

A. The same, in the cooler.

Q. This was done while he was candling them, was it not?

(Testimony of Henry Lester Pineda.)

A. While he was candling them.

Q. Will you tell us how often Colonel Hand inspected the same lot of fresh eggs?

A. About five or six times.

Q. That is the same lot we have been referring to? A. Yes.

Q. Was a similar switch made on each occasion?

A. Yes.

Q. Were these sample cases of fresh eggs ever delivered to Colonel Hand? A. No.

Q. Were they ever delivered pursuant to the order under which [655] Colonel Hand was candling? A. No.

Mr. Faulkner: He does not know anything about an order, your Honor. This is the first mention of an order.

The Court: Read the question.

(Question read.)

The Court: What order?

Mr. Hippeli: I will withdraw the question, your Honor.

The Court: Let it go out and let the Jury disregard it.

Mr. Hippeli: Q. Do you recall if on these cases of eggs which Colonel Hand stamped any label was placed on these stamps?

Mr. Faulkner: Which eggs? You have two separate orders. We would like to know, your Honor,—two separate lots of eggs, your Honor, he is referring to.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: Will you read the question, Mr. Reporter?

(Question read.)

Mr. Faulkner: We object to the question on the ground it is too indefinite, your Honor. Counsel should specify which eggs are involved.

Mr. Hippeli: I am referring to all the cases of eggs on which Colonel Hand placed his inspection stamp during these series of transactions, five or six inspections.

The Court: Reframe the question.

Mr. Hippeli: Q. Do you recall whether or not a label was placed upon all of the eggs which Colonel Hand inspected during [656] the month of February, 1941? A. Yes.

Q. Will you describe that label, please?

Mr. Faulkner: Just a moment. We ask that the particular eggs be specified. In other words, Colonel Hand has testified here that he was in there two or three times a week inspecting eggs. Now, these eggs up to this point of time, I assume, were eggs that had something to do with cold storage eggs. Now, what he did with all the eggs he inspected in the month of February, 1941, when we have in mind his testimony that they were delivering eighteen hundred cases of eggs a week to the Army these are transactions involving 50 cases——

The Court: All of these eggs is general. Develop the facts, whatever they may be, in relation to any lot of eggs.

Mr. Hippeli: Q. Directing your attention to

(Testimony of Henry Lester Pineda.)

the first lot of eggs which Colonel Hand inspected during the month of February, 1941, was a label placed upon that lot of eggs?

A. On the lot of eggs he put a stamp on, yes.

Q. Yes. Will you describe that label, please?

Mr. Faulkner: We will object to that on the ground the label is the best evidence.

The Court: He may describe it.

Mr. Faulkner: Exception.

The Witness: The label would be about 4 inches wide and about 6 or 7 inches—about 6 inches long.

Mr. Hippeli: Q. What was the color of the label?

A. A sort [657] of grayish color.

Q. Did you paste some of those labels on?

A. Yes.

Q. Did those labels have an address on them?

A. Yes.

Q. Do you recall the address?

A. Well, they were for C.C., and it all depended on the amount of eggs going. If there were seven cases going to the C.C. Camp in Stockton I would get seven labels with the address Stockton, and then maybe I would get fifteen or twenty with the address of Sacramento. These eggs—each case had to have one of these labels on it to show the distinction.

Q. And they were all C.C.C. labels, were they?

A. Yes.

Q. Mr. Pineda, you have testified that Charlie Eby removed the first lot of eggs which Colonel Hand stamped?

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: I beg your pardon. That is not the record. What Charlie Eby did further is hearsay as to the defendant. He said he did not know who removed them. He mentioned the name Charlie Eby and then said, "I don't know who removed them."

Mr. Hippeli: Q. Directing your attention to the first lot of eggs which had been inspected and stamped by Colonel Hand, do you know who removed those from the floor of the plant at Nye & Nissen?

A. Mr. Goddard brought it up to the front and Mr. Eby was with him. So I say I don't know whether he took them out or just helped him bring them up to the front of the plant.

Q. Directing your attention to the next lot of eggs which [658] Colonel Hand stamped, do you recall who removed those from the floor of the warehouse?

A. Well, I helped remove some.

Q. Was anyone else with you?

A. Mr. Nix and Mr. Goddard.

Q. Was there any truck driver with you?

A. No.

Q. Directing your attention to the third lot of eggs that was received, who removed those?

Mr. Faulkner: We haven't had any third lot of eggs described, your Honor, in this record with either time, place or persons present, nor any transaction that occurred in the presence of the accused concerning a third lot of eggs.

(Testimony of Henry Lester Pineda.)

Mr. Hippeli: I believe the witness testified that similar transactions occurred five or six times on the succeeding days.

The Court: As far as the record goes, if I followed it, there is nothing in the record with relation to a third lot of eggs.

Mr. Hippeli: Q. Do you recall Colonel Foster being present in the Nye & Nissen plant?

A. Yes.

Q. Do you recall the manner in which Colonel Foster indicated the eggs which he desired to candle?

Mr. Faulkner: We object to that as already asked and answered. He has described what Colonel Foster did for a full morning before the Court and Jury from the very beginning of his testimony.

Mr. Hippeli: I think what the witness described previously was one particular transaction in which Colonel Foster was [659] involved.

The Court: We do not know what transaction this is.

Mr. Hippeli: I am directing these questions preliminary, your Honor.

The Court: Fix the time.

Mr. Hippeli: Q. Will you select a particular time when Colonel Foster will have been present in the plant?

A. '39 he used to come down—he came down there and inspected eggs.

Q. Will you select a time when Colonel Foster was present in the latter part of 1939?

(Testimony of Henry Lester Pineda.)

A. Yes, I can.

Q. Do you recall if anyone else was present at that time?

A. Mr. Goddard and Mr. Menges and Mr. Nix.

Q. Where were they?

A. In the plant there, in the middle of the plant.

Q. Which plant?

A. 324 Townsend Street.

Q. Was anything said at that time?

Mr. Faulkner: Same objection, your Honor. This is 1939 with Colonel Foster, the eggs not identified, a Government shipment not identified, not within the issues framed in this indictment and no foundation laid.

The Court: The objection will be overruled. You may answer.

Mr. Faulkner: Exception.

A. What was said? [660]

Mr. Hippeli: Q. Yes, what was the conversation?

A. You mean while Colonel Foster was there?

Q. Was anything said at that time about Colonel Foster?

A. Oh yes. Colonel Foster had been coming down quite a few times——

Mr. Faulkner: We ask that that go out, your Honor. I understood this was a conversation with Colonel Foster, Goddard, Menges, Nix and the witness present.

The Court: You may state what was said at that time.

(Testimony of Henry Lester Pineda.)

The Witness: At that time Mr. Menges asked Mr. Goddard to get him a certain kind of ink, the same kind of ink that Mr. Foster used, and a brush —not the same type—he asked for a brush to be used for the purpose of marking the cases in the same way Colonel Foster marked them.

Mr. Hippeli: Q. Was Foster present at that time? A. No.

Mr. Faulkner: We move that that go out as hearsay, incompetent, irrevevant and immaterial, and not within the issues of this case.

The Court: Foster was not present.

Mr. Faulkner: I move that it go out as not within the issues of the case.

The Court: The Court will allow it. Overruled.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Do you know if such a brush and ink was obtained? A. Yes, it was. [661]

Q. By whom?

A. Mr. Goddard brought it down——

Mr. Faulkner: Same objection, your Honor.

The Court: Q. Do you know who got it?

A. I know Mr. Goddard handed it to us whenever we were working on the bench. I don't know who bought it.

Q. When was this? A. That was in 1939.

The Court: Proceed.

Mr. Hippeli: Q. What type of brush did Mr. Goddard hand you?

A. Just a regular stencilling brush.

Q. Did he hand you anything else?

(Testimony of Henry Lester Pineda.)

A. Yes, he handed us the ink.

Q. What kind of ink was it?

A. A sort of purple ink.

Q. Are you familiar with the type of brush Colonel Foster used at that time? A. Yes.

Q. Will you describe it, please?

A. Well, he had a brush about 4 inches long that he used to carry around with him all the time.

Q. Was it similar to the brush Mr. Goddard gave him?

A. Yes, it was sort of the same type—it wasn't exactly the same type but it was a regular stencilling brush.

Q. Would it leave the same kind of mark?

A. Yes, it would.

Q. What kind of ink did Colonel Foster use?

A. Purple ink.

Q. What kind of ink did Mr. Goddard hand you at that time? A. Purple ink.

Q. How did Colonel Foster use the brush and ink?

Mr. Faulkner: We object to that as all too general, your Honor: when did he use it, how did he use it, eight years [662] covered in that question. Who was present? No foundation attempted to be laid at all.

Mr. Hippeli: Q. Directing your attention to a time shortly after the conversation with Mr. Goddard just referred it, will you pick a particular time in the immediate vicinity of that conversation

(Testimony of Henry Foster Pineda.)

when Colonel Foster was present at the plant using his brush?

A. Colonel Foster came all the time down there to inspect the cases of eggs.

Q. Did he come a short time after his conversation with Mr. Goddard? A. Yes.

Q. How long after?

A. I would say about two days.

Q. Did you observe him in the plant?

A. Yes.

Q. Who else was present?

A. Mr. Menges and Mr. Goddard.

Q. What did Colonel Foster do?

A. Well, he came——

Mr. Faulkner: Same objection: time, place and persons present have not been fixed.

The Court: It may be overruled.

A. He came down to inspect some eggs. He took out his brush and he dabbed each case of eggs he wanted us to bring down to the candling room.

Mr. Faulkner: There is no foundation laid that any defendant was present.

The Court: Yes, there were two.

Mr. Hippeli: That is what I heard.

The Court: Read the question and answer.

(Record read.)

The Witness: He dabed each case of eggs he wanted me to bring down to the candling room for him to inspect.

Q. How did he dab them?

A. He just got his ink brush and dabbed each

(Testimony of Henry Lester Pineda.)

case on the label there where the ink mark would show.

Q. What was done with those cases?

A. Those cases of eggs were brought back to the candling room. He hit a case of sample eggs so he could inspect them first.

Q. Were some of the cases he hit with his brush, did they contain markings which were different from other cases that he hit with his brush?

A. Yes.

Q. What was different in those markings?

A. The differences in those markings—he would have a little initial on some of those cases of eggs to show that they were sample cases and they had full covers, too.

Q. What were the other cases of eggs that did not contain these markings? What did they contain?

A. They had what they called a full cover but it would be slit in the middle.

Q. What type eggs were inside?

A. They are what we call cutouts.

Mr. Faulkner: There is no foundation to show that the witness knows what was in those cases, your Honor. He just blithely says they were called cutouts. He does not know what the eggs were.

The Court: Q. What are cutouts?

A. Cases of eggs—when [664] an order is put up the type of eggs that the order calls for is put in one case and everything under that grade is put

(Testimony of Henry Lester Pineda.)

into another case. That is what we call our cutout.

The Court: Proceed. Let the record stand.

Mr. Faulkner: Your Honor, may I make myself clear?

The Court: The Court has ruled.

Mr. Faulkner: Exception.

The Court: Proceed.

Mr. Hippeli: Q. What was done with the cases of eggs on which Colonel Foster had placed his mark with the brush and ink?

A. He got the sample cases and the cutouts which were placed with the sample cases, we brought them back in the butter room.

Q. Did Colonel Foster go back to the candling room?

A. He went back to the candling room.

Q. Were the several cases that would be selected taken back to the candling room?

A. Yes, they were placed on the outside of the candling room and he goes on the inside of the candling room.

Q. Were all the cases Colonel Foster selected to grade given to him? A. No.

Q. Which cases were given to him?

A. The sample cases.

Q. How were they indicated?

A. They were indicated by full covers and an initial.

Q. Were any other cases other than those which Colonel Foster had selected given to him?

A. Yes. [665]

(Testimony of Henry Lester Pineda.)

Q. By whom?

A. By Mr. Menges and myself.

Q. How were they marked?

A. Well, we had them in the candling room already without any covers on them.

Q. Were there any marks on them?

A. Initialled.

Q. Was any ink and brush used to mark those cases? A. Yes.

Q. Who did that?

A. At that time I did.

Q. Who told you to do it?

A. Mr. Goddard.

Q. Will you describe what you did, the cases that you brought out of the butter room?

A. I brought the ink pad, the ink and the brush into the butter room, and I dabbed the side of the case of eggs.

Q. Who gave you that ink and brush?

A. We had it in the butter room there.

Q. By we to whom are you referring?

A. Mr. Menges, Mr. Goddard and myself.

Q. Who directed you to dab those cases?

A. Mr. Menges—well, he had told me before that what to do in case I used those cases of eggs.

Q. What did you do with those cases?

A. I dabbed the side of each case of eggs—I mean where the label is. I brought them out to the floor and brought the eggs—the cutout cases into the butter room.

Q. Was the mark you put on them similar to the mark Colonel Foster had placed on his?

(Testimony of Henry Lester Pineda.)

A. Yes.

Q. Were the cases which you marked with a mark similar to those [666] Colonel Foster had put on his pushed through the candling curtain to Mr. Foster?

Mr. Faulkner: If it please your Honor, the marks are the best evidence.

The Court: He can state what was done at that time and place.

A. We gave them to Colonel Foster to inspect, and when he shoved them out—when he got through with five cases of eggs, I got those five cases of eggs and brought them back into the candling room, and took the five cases of eggs that he had marked but not inspected and brought them out to the floor.

The Court: We will take a recess for a few minutes. The jurors may be excused.

(Recess. [667]

The Court: Proceed.

Mr. Hippeli: Q. Will you select the time Colonel Foster was indicating the cases of eggs to be candled prior to the time that you purchased that brush?

A. It would be about two weeks or so before we got the brush.

Q. Who was present at that time?

A. Mr. Menges and Mr. Goddard and myself.

Q. Was Colonel Foster present?

A. Yes.

Q. How did Colonel Foster indicate the eggs that he desired to candle on that occasion?

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: Same objection, your Honor.

The Witness: Same——

The Court: He may answer.

Mr. Faulkner: Exception.

The Witness: The same way, he dabbed the case with ink off his brush.

Q. Did Colonel Foster go to the candling room?

A. Yes.

Q. What was done then?

A. The cases of eggs——

Mr. Faulkner: No foundation has been laid that the witness went to the candling room to describe what the Colonel did. The best evidence of what the Colonel did is what he says he did, unless the witness saw him do it.

Mr. Hippeli: Q. Did you see Colonel Foster go to the candling room? A. Yes.

Q. Thereafter—— [668]

The Court: When?

A. About two weeks before we got the ink brush, around January, 1941—1939.

Mr. Hippeli: Q. After you saw Colonel Foster go into the candling room did you observe Mr. Goddard and Mr. Menges do anything?

A. Well, when he picked out his cases of eggs we placed them in dumps and brought them back into the outside of the candling room. Then we—that was Mr. Goddard and Mr. Menges and myself took the labels off the eggs, took the labels off the cases that he had put his dab on and we would place them on the different cases of eggs, the sample

(Testimony of Henry Lester Pineda.)

cases of eggs. Before he came we would label the cases of eggs, so with fresh labels on them, then we had the labels off and put them on the other cases. We took off the cases of eggs where he put the dab on, his mark on, and we put them on the sample cases of eggs.

Q. Let's get this clearly. Colonel Foster selected a certain lot of eggs? A. Yes.

Q. He placed his stamp on them? A. Yes.

Q. How? A. Yes.

Q. Did he place his stamp on some sample cases and some cutouts? A. Yes.

Q. What did you do with the sample cases?

A. We put them on the bench and gave them to Colonel Foster.

Mr. Faulkner: All that has been testified to by Mr. Hippeli. [669] He had not mentioned anything about samples or cutouts.

The Court: Read the questions and the answers.

(Record read.)

The Court: Objection overruled.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Did Colonel Foster place his stamp on any cases which were not samples?

A. Yes.

Q. What was done with them?

A. We took the labels off these cases of eggs and put them on the cases of eggs we had in the butter room and gave them to Colonel Foster to inspect.

Q. What was the character of the grade of the

(Testimony of Henry Lester Pineda.)

eggs in the butter room upon which you placed the labels bearing Colonel Foster's stamp.

Mr. Faulkner: We object——

A. They were the same type as the sample cases.

Mr. Faulkner: Excuse me. Your Honor, again the witness speaks so fast I cannot object. I object on the ground it is incompetent, irrelevant and immaterial. The witness has not qualified to indicate the grade of the *butter* in these boxes.

The Court: Read the question.

(Question read.)

The Court: I will sustain that objection.

Mr. Hippeli: Q. Do you know the grade of eggs in the cases in the butter room?

Mr. Faulkner: We submit this witness has not qualified to [670] know the grade of eggs in the butter room or any other place in the world.

The Court: If he knows he may answer.

Mr. Faulkner: That is expert testimony, your Honor.

The Court: The Court ruled.

Mr. Faulkner: Exception.

The Witness: A. No, I don't.

Mr. Hippeli: Q. Do you know if the grade of eggs contained in the lot in the butter room was similar to the grade of eggs contained in the sample cases which Colonel Foster selected?

Mr. Faulkner: The same objection.

The Witness: A. Yes.

The Court: Sustained.

Mr. Hippeli: Q. After Colonel Foster left at

(Testimony of Henry Lester Pineda.)

(that time did you hear any conversation between Mr. Goddard and Mr. Menges?

A. Yes. Mr. Menges——

Mr. Faulkner: Just a moment. We object to it as incompetent, irrelevant, and immaterial, hearsay, not within the issues in this case.

The Court: Overruled.

Mr. Faulkner: Exception.

The Witness: Mr. Menges was telling Mr. Goddard that Colonel Foster had been complaining that there was too much paste being put on the covers of cases and he was getting his working frock, or his little coat that he wore dirty and Colonel Foster didn't [671] like that. It was kind of hard——

Mr. Faulkner: We ask that go out, your Honor.

The Court: It goes out.

The Witness: He said it was too much work for us to change labels, putting them on from one case to the other, it took too much time, for him to get this stamp, this brush and ink.

Mr. Hippeli: Q. Who said that?

A. Mr. Menges.

Q. To whom? A. To Mr. Goddard.

Q. Immediately thereafter was the stamp and ink obtained?

A. Maybe a couple of weeks or so.

Q. Do you recall a soldier ever being placed to guard cases of eggs which were to be candled by an Army inspector? A. Yes.

Q. When?

A. That was about the latter part of 1939.

(Testimony of Henry Lester Pineda.)

Q. Where?

A. 324 Townsend Street.

Q. Was that the Nye & Nissen plant?

A. The Nye & Nissen plant.

Q. Who was present on this occasion?

A. There was Mr. Goddard, Mr. Menges and myself.

Q. Were any Army inspectors present?

A. Yes, Colonel Foster was.

Q. Was anyone else present?

A. He had, I think, a couple of lieutenants with him and a sergeant.

Q. What was done at that time?

A. He placed the sergeant outside the candling room where we were working to watch us.

Mr. Faulkner: We object to this as not within the issues. [672] The same objection as made before, your Honor. No way to identify the cases, no way to identify it as a sale to any governmental agency.

The Court: Overruled.

Mr. Faulkner: Exception.

The Witness: He placed the sergeant outside to watch us.

Mr. Hippeli: Q. Outside where?

A. Outside the candling room, where we placed the cases of eggs for him to inspect.

Q. Had Colonel Foster selected certain eggs?

A. Colonel Foster selected certain eggs and the sergeant was with him.

Q. Had those cases been placed back near the candling room?

(Testimony of Henry Lester Pineda.)

A. Not near the sergeant—I started breaking them down and the sergeant started going with Colonel Foster and Colonel Foster told him, "You stay out here," and he stayed outside and watched us place the cases of eggs on the bench.

Q. What was done?

A. Colonel Foster picked out quite a few samples, so we gave him the samples first. When the time came for us to switch the cutouts, put samples in the place of the cutouts, Mr. Goddard told the driver, the sergeant, he was a driver for Colonel Foster, to go outside, that his car was in the way and some fellow wanted to back up with his truck.

Q. What happened?

A. He went out to move the truck.

Q. Who?

A. The sergeant. In the meantime we placed the cutout cases for sample cases.

Q. You had replaced the cutout cases with sample cases? A. Yes. [673]

Q. Who told you to do it?

A. Mr. Goddard.

Q. Did anybody else help you?

A. Mr. Menges.

Q. Where did you get the sample cases?

A. We had them in the butter room.

Q. Do you remember any other time at which a guard was placed over eggs which were being inspected by an Army inspector?

A. The next time Colonel Hand came down, it was about four days to a week later, he had the same

(Testimony of Henry Lester Pineda.)

sergeant there to stand outside to guard us and he told—Mr. Goddard came down and he said——

Mr. Faulkner: No time, no place, no defendant.

The Court: The time is fixed. Read the answer.

(The answer was read by the reporter.)

The Witness: That was Colonel Foster.

Mr. Hippeli: In place of Colonel Hand?

A. Yes.

Q. Who was present?

A. Mr. Menges, Mr. Goddard and myself.

Q. Had Colonel Foster selected the samples?

A. Yes.

Q. Had he gone into the candling room?

A. Yes.

Mr. Faulkner: How could Colonel Foster be selecting samples and Colonel Hand is doing the same——

Mr. Hippeli: He corrected that. He said Colonel Foster. You will have to speak more loudly so Mr. Faulkner can hear you.

The Court: Raise your voice.

Mr. Hippeli: Proceed.

A. Then Ruby, Mr. Goddard told—he started to talk to the [674] sergeant and the sergeant told him, "Don't tell me to take my machine out of the way because my machine was not in the way of the truck". So Goddard asked him if he would like a drink. The sergeant told him yes. So he told him to go up to the office and get himself a bottle and the sergeant said no, he said, "I am supposed to stay here. Why don't you get it for me?". Mr. Goddard

(Testimony of Henry Lester Pineda.)

told him, "I can't go up and get it, they would think I wanted it for myself", so the sergeant went up and got his bottle.

Q. What was done during the sergeant's absence? A. We switched the sample.

Q. Who? A. Mr. Menges and myself.

Q. Was the switch similar to the prior—were cases taken from the butter room? A. Yes.

Q. By whom? A. By myself.

Q. Were the cases that were taken from the butter room——

A. ~~Given to~~ Colonel Foster to inspect.

Q. Do you recall ever making a delivery of eggs to the Navy dock down near the Third Street Bridge? A. Yes.

Q. When?

A. About the early part of 1941.

Q. Where was the lot loaded?

A. I am trying to remember. Oh, 1941, when we first get the passes to do down to the waterfront. When they put those restrictions around the waterfront, nobody could enter without a pass.

Q. Do you recall about when that was?

A. I think it was 1942. [675] beginning of 1942.

Q. Are you talking now about the first part of 1941 or 1942? A. 1942.

Q. Will you direct your attention to a delivery then made around the first part of 1942?

A. Yes.

Q. Did you accompany the delivery?

A. Yes.

(Testimony of Henry Lester Pineda.)

Q. From where was the delivery made?

A. Made from Nye & Nissen's at 824 Townsend Street.

Q. What was delivered? A. Eggs.

Mr. Faulkner: We object to that as calling for the opinion and conclusion of the witness and hearsay as to the defendants.

The Court: If you know you may answer. What was delivered?

The Witness: Eggs.

The Court: Eggs, he says.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Who directed the loading of the eggs? A. Mr. Goddard.

Q. Who was present at the loading of the eggs?

A. Mr. Nix, Mr. Smiley and myself.

Q. Was Mr. Moncharsh present? A. Yes.

Q. Do you recall whether or not that particular load of eggs contained any cases which bore a stamp? A. Yes, they did.

Q. Was that stamp a Government stamp?

A. It was an Agriculture stamp.

Q. Federal Department of Agriculture stamp?

A. Agriculture. [676]

Q. Was it a U. S. Department of Agriculture stamp? A. Yes, it was.

Q. Did that delivery of eggs contain any cases of eggs which did not bear a stamp?

A. Yes.

Q. Did you assist in the loading of the truck?

A. The latter part of the truck I did. When I

(Testimony of Henry Lester Pineda.)

went to the front of the office where we were loading the truck it was about half full.

Q. Who told you to assist in the loading of the truck? A. Mr. Goddard.

Q. What was done?

A. We loaded the truck and left a space in the middle of the truck.

Q. Who told you to do that?

A. Mr. Goddard and Mr. Smiley, and we left a space for Mr. Nix and I to sit inside the truck in between the cases of eggs.

Q. You were directed then to make and prepare the load so there would be a hole inside?

A. Yes.

Q. Who told you to do that?

A. Mr. Goddard.

Q. What did you do?

A. We loaded the truck and after it was loaded Jimmie Nix and myself got in the middle of that truck.

Q. Were cases of eggs placed in the aperture through which you entered the eggs?

A. What?

Mr. Hippeli: May the question be read?

The Court: Read it.

(Question read.)

Mr. Hippeli: Maybe I'd better reframe that. While you were loading the delivery of eggs did you go onto the truck? [677]

A. After we finished loading the cases of eggs.

Q. What did you do?

(Testimony of Henry Lester Pineda.)

A. Jimmie Nix and I stayed there while Harry Smiley drove us to the waterfront.

Q. Were you concealed in the truck?

A. Yes.

Q. How?

A. By the cases of eggs around us.

Q. They were packed all around you?

A. Around Jimmie Nix and myself.

Q. Did you have a pass to——

Mr. Faulkner: May I have the last couple of questions and answers read?

(The record was read.)

Mr. Faulkner: Is that one of the charges, that they violated the pass rule on the waterfront? We object to all that as incompetent, irrelevant, and immaterial, hearsay, not within the issues of this case. I move to strike it out.

Mr. Pratt: It was a trick, scheme and device to defeat inspections.

Mr. Faulkner: Well, they weren't required to be inspected. There was no requirement to inspect——

The Court: Objection overruled. The question and answer will stand.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. At the time you were directed to go in the truck were you given any directions as to why you were to go in that truck?

A. Yes. Jimmie Nix—— [678]

Q. Who gave you them?

A. Mr. Goddard.

(Testimony of Henry Lester Pineda.)

Q. What did he say?

A. He said as to unloading the truck to keep the cutout cases up with the sample cases of eggs already marked with a Government stamp.

Q. Where did he tell you to do that?

A. At the waterfront.

Q. Had you a pass to get to the waterfront?

A. No. That's why we had to hide in the truck.

Q. Where did the truck go?

A. It went to the last pier on the waterfront, I believe it is either 48 or 50-A, I am not sure.

Q. When did you first see the light of day on the waterfront?

A. When we got there to the pier.

Q. Were there guards around you?

A. Yes. They had a Navy guard outside. The Navy guard was demonstrating to some young fellow there all the different salutes they have and his gun accidentally went off. Jimmie Nix and I thought they were shooting at us.

Mr. Faulkner: Just a minute. We object to that as hearsay. Mr. Hippeli, if the Court please, knows these things are important. He knows what is coming. He makes no effort—I try not to object too much, but I can't stand here and let a lawyer ask those questions, your Honor, and make any semblance of representing the defendants. They are not lawyer alike. They are leading, they are suggestive, they call for hearsay. I don't like to object all the time.

(Testimony of Henry Lester Pineda.)

The Court: What relation has this shooting to the charge [679] here?

Mr. Hippeli: It has none, your Honor.

The Court: Let it go out. Let the Jury disregard it for any purpose in any way. Proceed.

Mr. Hippeli: Q. Will you tell us how you unloaded the truck at the pier you just described?

Mr. Faulkner: Who was present?

The Court: Did you unload the truck?

A. Yes.

Q. Who was present?

A. Mr. Nix, Mr. Smiley and myself.

Mr. Faulkner: We move it all go out as hearsay. None of those people are on trial.

Mr. Hippeli: He has testified that Mr. Goddard directed him how to unload the truck down on the waterfront and place the stamped cases there with unstamped cases. I am going to bring out that in pursuance to the direction of that defendant Mr. Pineda did so unload the truck at the waterfront.

Mr. Faulkner: The evidence of Mr. Goddard there is hearsay. That is the thing. What happened after that out of his presence is hearsay.

The Court: I will allow it. Overruled.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Did you unload the truck at the waterfront? A. Yes.

Q. How? [680]

The Court: What was done?

A. We placed the bottom cases that didn't have any stamps, and the two top cases were the ones

(Testimony of Henry Lester Pineda.)

with stamps and all around the outside of the lot we placed the stamped cases.

Mr. Hippeli: Q. Where would the unstamped cases be?

A. In the middle of the pile that we built and some around the bottom.

Q. Do you recall making any similar delivery to a pier at Fisherman's wharf? A. Yes.

Q. When did you make that?

A. Well, about two or three weeks before this incident we had here, we took it there one Saturday afternoon.

Q. From where did you deliver it?

A. From Townsend Street.

Q. Who was present at the time the load was made up?

A. It was Mr. Nix, Mr. Goddard, Mr. Berman and myself, and he had a couple of his drivers, I don't recall which ones.

Q. Was there any conversation at that time?

A. Yes. We were supposed to do the same thing.

Q. Will you tell us——

Mr. Faulkner: That is not the conversation.

The Court: Just a moment. Not what you were supposed to do. State the conversation.

A. Mr. Goddard told us to go over there and place the cases of eggs the way we always placed them down on the waterfront when we had some cases that were stamped and some that were not, and when we loaded the truck there would be cases go in back so as [681] to be—they were using the

(Testimony of Henry Lester Pineda.)

small city trucks whereyou close the two doors from the outside and Mr. Nix and I would be in the back of those trucks.

Mr. Hippeli: Q. Did that load include some cases that bore a Government stamp? A. Yes.

Q. What Government stamp?

A. I don't recall.

Q. Did it include certain cases which did not bear of Government stamp?

A. Yes. That was the reason Mr. Goddard said he was sending us down.

Q. To what pier did you go? A. Pier 45.

Q. Where is that pier?

A. That is near Fisherman's Wharf.

Q. Who accompanied you?

A. I went with Mr. Nix. I don't remember who drove the truck.

Q. At the time the truck arrived at this pier did you get out of the truck?

A. Mr. Nix and myself. As soon as we were inside the dock the driver of the rtuck opened the door and then we got out.

Q. Did you recognize the pier? A. Yes.

Q. Do you know if it was an Army pier?

A. Yes. There was an Army guard around it so I took it for granted it was an Army pier.

Q. How did you unload that——

Mr. Faulkner: Same objection.

The Court: Overruled.

The Witness: We placed the stamped cases on

(Testimony of Henry Lester Pineda.)

the outside of [682] the pile and the unstamped cases on the inside.

Q. Do you recall of deliveries made by Nye & Nissen to Government purchasers which were rejected?

Mr. Faulkner: We object to that on the ground it is incompetent, irrelevant and immaterial, and not within the issues of this case.

The Court: You may answer yes or not.

A. Yes.

Mr. Hippeli: Q. Do you recall of a delivery which was rejected by the Army? A. Yes.

Q. When? A. In the latter part of 1938.

Mr. Faulkner: That calls for the opinion and conclusion of the witness.

The Court: Well, I asked him to answer yes or no.

Mr. Faulkner: And hearsay.

Mr. Hippeli: It is preliminary: I am trying to fix a time, place and persons present for a certain conversation.

The Court: Overruled.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Where?

A. 324 Townsend Street, Mr. Nix, Mr. Andrade and I were sitting in Mr. Andrade's truck.

Mr. Hippeli: Q. Was Mr. Moncharsh there?

A. He came down between 12 and 12:30, about 12:15, about noon. We were having our lunch and Mr. Moncharsh came down.

Q. What was said? [683]

(Testimony of Henry Lester Pineda.)

The Court: Just a moment. Fix the time.

A. Between 12 and 12:30, the latter part of 1938.

Q. The latter part of 1938?

Mr. Hippeli: Q. Will you tell——

Mr. Faulkner: We haven't identified any Army rejection here, your Honor. He starts in about an Army rejection and he ends up with a conversation six or eight years while having lunch on a truck.

Mr. Hippeli: The preliminary question was identifying a conversation, the time and place and people present at the conversation were fixed. I intend to ask the witness the subject matter of the conversation.

Q. What was said at that time?

The Court: Objection overruled.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Tell us what was said at that time?

A. Mr. Moncharsh came down from his office upstairs and asked, was complaining to Jimmie.

Q. Who is Jimmie?

A. To Mr. Nix about this order being rejected. Mr. Nix was kind of angry because we had been ribbing him. He said this, he said that to him—"We used these same egg samples for a long time and they are old as the hills". Mr. Moncharsh told him, "You can't go by eggs, don't forget on wine the older it gets the better it is". Mr. Nix kept quiet so Andrade kept ribbing him about that, telling how eggs were like [684] wine.

(Testimony of Henry Lester Pineda.)

Q. Did Mr. Moncharsh make any statement about whether or not those eggs had been inspected?

A. Mr. Nix said they had been inspected so many times they were old as the hills.

Q. Did Mr. Moncharsh say anything about how many times——

A. No. He said it didn't make—how old they were, it didn't make any difference.

Mr. Faulkner: That is a conversation, an isolated conversation not related to any fact charged in this case and hearsay as to the defendants: it is incompetent, irrelevant and immaterial.

Mr. Pratt: It shows, if the Court please, Moncharsh's knowledge of procedure in connection with a shipment.

Mr. Faulkner: No shipment is involved, no inspection is involved, no particular eggs are involved.

Mr. Pratt: It is general knowledge of the fact that the inspection of the same cases of eggs was made over and over again.

Mr. Faulkner: There is nothing wrong with that.

The Court: I will allow the question. The objection is overruled.

Mr. Faulkner: Exception. There is nothing wrong with eggs being submitted over and over again for Army inspection, and I ask the Government now to indicate to the Court any rule or regulation that so provides, or statute.

Mr. Pratt: Plain every-day fraud—that is all—and deceit, to pass the same case of eggs to an in-

(Testimony of Henry Lester Pineda.)

spector over and over again, with the inspector thoroughly believing that he is inspecting a different case.

Mr. Faulkner: How can he possibly be deceived? How can be possibly be deceived?

The Court: That will be a matter for the Jury. Proceed, gentlemen.

Mr. Hippeli: Q. Do you recall whether cases of eggs were ever stamped by one other than a Government insector? A. Yes.

Q. When?

A. About a year—from six months to about a year after I worked there I saw them stamp cases with a stamp other than the inspector's stamp.

Mr. Faulkner: We ask that transactions in 1935 go out, your Honor, as hearsay, incompetent, irrelevant and immaterial. [686]

The Court: Q. Was this in 1935?

A. Well, from 1935 on.

The Court: It may go out.

Mr. Hippeli: I think this question is preliminary to something that is important to our case.

The Court: What is the matter important to your case that you have in mind?

Mr. Hippeli: The fact that the defendants used a stamp which purported to be a Government stamp in the absence of Government inspectors, and which the Government believes it will prove was owned by the defendants themselves.

The Court: Proceed to prove the facts.

Mr. Hippeli: I was bringing that out from the

(Testimony of Henry Lester Pineda.)

witness, that the first time he observed it was in 1935.

The Court: Well, you might bring it within better range than that if it is possible, and then you can go back to 1935 if it is necessary.

Mr. Hippeli: Q. When was the last time you saw the stamp you just referred to?

A. The last time I saw it was about 1939.

The Court: Q. What stamp are you talking about now?

A. The stamp that Nye & Nissen used when the Government inspector was not around.

Q. The stamp that Nye & Nissen used when the Government wasn't around—what do you mean by that?

A. When the Government inspector wasn't around. [687]

The Court: Proceed.

Mr. Hippeli: Q. Will you describe the stamp, please?

A. The stamp was—it is the sort of stamp the State of Agriculture used to stamp his cases of eggs, which would be sort of a rectangular shape. It had State of Agriculture, and then it had the date and the type of eggs.

Q. Directing your attention to the Government stamp on U. S. Exhibit No. 48, I will ask you if the stamp you are referring to is similar to that?

A. It was something like this, but instead of having "U. S. Grade AA," it had "U. S. Extra.

(Testimony of Henry Lester Oviedo.)

U. S. Special, Standard—" it didn't have no AA or A.

Q. Instead of having a letter grade it had a name grade, is that correct?

A. A name grade.

Q. Mr. Pratt said you said the State——

A. I mean the Department.

Q. The United States Department of Agriculture? A. Yes.

Q. Again directing your attention to U. S. Exhibit 48, the top part of the stamp contains the name United States Department of Agriculture; do you recall whether or not the stamp had that on it?

A. Yes, it did.

Q. Did it have a date in the middle of it?

A. It had a date.

Q. Under the date did it have Government graded? A. I don't recall that.

Q. And on the lower line was that U. S. Grade and then a name grade as distinguished from a letter grade, is that correct? [688]

A. Yes.

Mr. Hippeli: The stamp on that exhibit was rather obliterated, your Honor, so if I may, I will ask the witness if the stamp he has referred to is similar to U. S. Exhibit No. 26. Will you observe those stamp markings, please? A. Yes.

The Court: Q. What do you mean by "Yes"?

A. Yes, it is similar to that type except the lettering on it. They had a name grade.

Mr. Hippeli: Q. They had United States De-

(Testimony of Henry Lester Pineda.)

partment of Agriculture. Did it have San Francisco, do you recall?

A. No, I do not recall the San Francisco on it.

Q. It had a date in the middle?

A. It had a date in the middle and then it had a name grade of an egg.

Q. Have you ever observed a pad with that stamp, an ink pad? Did Nye & Nissen have just the stamp or did they have a pad also?

A. They had a pad, too.

Q. Do you recall the type of container in which that stamp was kept?

A. It was kept in a wooden box.

Q. Can you describe that wooden box?

A. I didn't—I can describe it as best I can see it. I didn't really take a good look at it because Mr. Goddard would bring it from the office upstairs.

Mr. Faulkner: He is asked to describe a box, and now we have Mr. Goddard doing something.

The Witness: It was more or less like a cigar box, that [689] type—it might have been a little bigger—but more or less like a cigar box.

Mr. Hippeli: Q. During the period of time at which you were employed at Nye & Nissen did you ever see that stamp used in the presence of a Government inspector? A. No.

Q. When did you first see this stamp?

A. In 1935.

Q. Where?

A. 324 Townsend Street, Nye & Nissen plant.

(Testimony of Henry Lester Pineda.)

Q. At that time did you observe anyone using it?

A. Yes.

Q. Who? A. Mr. Goddard.

Mr. Faulkner: Just a moment. 1935 is before this indictment, your Honor, three years before. It is incompetent, irrevelant and immaterial and not within the period covered by the indictment, and therefore not within the issues of this case.

Mr. Hippeli: I think it is material on our conspiracy count. I would say our conspiracy began in 1938 and continued up to the time of the indictment. However, a course of conduct established prior to 1938 can be shown to have continued up to and including the time of the conspiracy charged in the indictment. I believe the evidence is admissible.

Mr. Faulkner: We submit the objection, your Honor.

The Court: The objection will be overruled. I will allow it.

Mr. Faulkner: Exception.

The Court: It goes to the weight of the testimony. 1935 is far removed, however, proceed. [690]

Mr. Hippeli: Q. Who did you see using it at that time? A. Mr. Nix and Mr. Goddard.

Q. How were they using it?

A. They were stamping up some cases of eggs that I had scraped off, I had buffed.

Q. What do you mean by that?

A. I had buffed a Government stamp off these case of eggs and they were stamping up some other cases alongside of them with this stamp.

(Testimony of Henry Lester Pineda:)

Q. Do you know whether this particular lot had been graded by Government inspectors?

A. Not the cases they were stamping.

Q. Do you know what was done with those cases of eggs upon which they placed this stamp?

Mr. Faulkner: Now, your Honor, we have gone into what the Government inspectors did and what Goddard and Nix did in 1935. I respectfully submit it is all incompetent, irrelevant, and immaterial, and not within the issues of this case.

The Court: I will sustain the objection at this time. Let it go out and let the Jury disregard it.

Mr. Faulkner: I will move that it go out.

The Court: I instruct the Jury to disregard transactions in 1935 at this time.

Mr. Faulkner: Does your Honor instruct the Jury to disregard it?

The Court: I so instructed them.

Mr. Hippeli: Your Honor, did you strike everything pertaining to the stamp back in 1935, or just the use of the stamp? [691]

The Court: No, I struck out everything in relation to that stamp in 1935.

Mr. Hippeli: Q. Directing your attention to January of 1938, do you recall having seen the stamp present in the plant at Nye & Nissen around that time? A. Yes.

Q. Who had possession of the stamp at that time? A. Mr. Goddard.

Q. Do you recall where Mr. Goddard had kept the stamp at that time?

(Testimony of Henry Lester Pineda.)

A. In his office, in the office upstairs.

Q. Was that Mr. Moncharsh's office?

A. Yes, the main office.

Q. As distinguished from Mr. Goddard's office in the lefthand corner downstairs?

A. Yes, upstairs in the main office.

Mr. Faulkner: I object. He said it was in Mr. Goddard's office upstairs and now Counsel asks him——

The Witness: I didn't say in his office upstairs.

Mr. Faulkner: Just a moment, Mr. Witness. He said Mr. Goddard kept it in his office and now we have it upstairs in Mr. Moncharsh's office.

The Witness: I didn't say Mr. Goddard's office. Mr. Goddard went up and got it in the main office.

The Court: Q. Where was this stamp kept?

A. Upstairs in the main office.

Q. Upstairs in the main office? A. Yes.

The Court: All rig't. Let us proceed now.

Mr. Hippeli: Q. Directing your attention to an occasion after January of 1938, can you recall a particular occasion when [692] you saw this stamp being used? A. Yes.

Q. When?

A. Oh about the middle of 1938. Mr. Goddard came downstairs and told me——

Mr. Faulkner: Just a moment.

Mr. Hippeli: Q. Who was present?

A. Mr. Goddard and myself.

Q. What did you observe?

A. Mr. Goddard told me to clean up what I was

(Testimony of Henry Lester Pineda.)

doing back there because I was going to give him a hand doing some work. Then he went upstairs, got his stamp, came down, and I was supposed to stand outside and make sure no one came down while he stamped cases of eggs.

Q. What was done then?

A. He stamped cases of eggs, and while he was stamping them I saw someone come up in front where his office was and I told him about it.

Q. You told who?

A. Mr. Goddard. He placed the stamp down, took a look and said he was going out and talk to those people. He said, "It doesn't pay to leave this around." He picked up the stamp and put it in his pocket. And then he went up and talked to some man—looking for something—directed him upstairs. Mr. Goddard came back, gave me the stamp, and I continued stamping the eggs while he stood outside and watched.

Q. Did Mr. Goddard direct your attention to more than one case of eggs?

A. Yes, when he came back.

Q. Had those cases of eggs been inspected?

A. No.

Q. Do you know what was done with those cases of eggs?

A. They were delivered. They were put on the truck. [693]

Q. Will you tell us how often you observed that stamp being used during your period of employment?

(Testimony of Henry Lester Pineda.)

Mr. Faulkner: I move to strike out the last episode relating to the stamp unless it is connected up with relation to the fulfillment of a Government order, your Honor. It must be a matter within the jurisdiction of the United States. That is the language of the statute.

Mr. Pratt: It is directly within the allegations of the indictment, clear fraud upon the Government in connection with those stamps.

Mr. Faulkner: Well, I don't want to argue the question.

The Court: The objection will be overruled. It is limited to the stamp.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Will you answer the next question, please?

A. What is the question?

(The last question was read by the reporter.)

A. I guess I saw it about forty of fifty times.

Mr. Hippeli: Q. Did you ever see Mr. Menges use the stamp? A. Yes.

Q. When was that?

A. That was the same year, 1938.

Q. Can you fix the time during the year?

A. Well, no.

Q. Was it around Christmas time?

A. It was later than the time I helped him. It was about a month or so—maybe three weeks or a month after I had helped him. [691]

Q. Have you ever had any conversation with Mr. Nix about this stamp? A. Yes, I did.

(Testimony of Henry Lester Pineda.)

Q. When?

Mr. Faulkner: We object to that as hearsay as to the defendants on trial, your Honor.

Mr. Hippeli: Insofar as the conspiracy count is concerned, your Honor, Mr. Nix is joined as a conspirator; when conspiracy is established, the act of one conspirator is the act of all, and I believe that any statement that has been made by Mr. Nix, any act that has been done by Mr. Nix pursuant to the conspiracy will be the act that will bind all the conspirators.

Mr. Faulkner: I will submit the objection.

The Court: I will limit it to the conspiracy count. The objection will be overruled.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. When was this conversation?

A. Oh, about 1936.

Q. Where? A. At Nye & Nissen plant.

Q. Who was present?

A. Mr. Nix and myself.

Q. What was said?

Mr. Faulkner: Just a moment. Your Honor, the law is clear. A conversation between this man here and Mr. Nix in 1936 cannot be a conversation pursuant to or in furtherance of a conspiracy that started in 1938, and it is not admissible against the defendants here on trial under any aspect of the law. I submit [695] that objection. It is hearsay as to them—two years before the conspiracy is alleged to have commenced.

Mr. Hippeli: I offer to prove by this conversation the manner in which——

(Testimony of Henry Lester Pineda.)

The Court: The Court is prepared to rule. I will sustain the objection.

Mr. Hippeli: Q. Did you have any conversation with Mr. Nix pertaining to the stamp after 1938? A. No.

Q. Do you recall any conversation with Mr. Nix shortly before Mr. Nix left the employ of Nye & Nissen? A. Yes.

Q. When was that? What was the date of the conversation, I mean?

A. I guess this was about 1939 when Mr. Andrade had gotten a raise in salary there and Mr. Nix wanted a raise, too.

Q. Who was present at that conversation?

The Court: Fix the time when the conversation took place.

A. Mr. Nix and Mr.——

Mr. Faulkner: Just a moment, please.

The Witness: The latter part of 1939.

Mr. Faulkner: Excuse me. Will the witness stop until the Court's request has been acceded to?

The Court: I am going to limit it to the time, fixing the time is all. He injected the salary raise, which can't do any harm; it is because the witness just happened to volunteer that statement.

Q. What time was this?

A. About the latter part of 1939. [696]

Q. About the latter part of 1939 you had a conversation with whom?

A. With Mr. Nix, Mr. Goddard and Mr. Andrade.

(Testimony of Henry Lester Pineda.)

Q. Where was that conversation?

A. 324 Townsend.

Q. In the afternoon, the morning, or can you fix the time any closer than that?

A. No, I can't.

The Court: All right, proceed.

Mr. Hippeli: Q. What was said?

Mr. Faulkner: Same objection, your Honor, hearsay.

The Court: The objection will be overruled.

Mr. Faulkner: Exception.

A. Mr. Nix wanted the same amount of money that Mr. Andrade was getting, and he told me that they had offered him a certain percentage for passing—a bonus for passing these eggs on the waterfront, and he refused that. Instead of that he got his raise, which equalled Tom Andrade's salary.

Mr. Faulkner: I ask that that go out as not competent, incompetent, irrelevant and immaterial, and not within the issues of this case.

The Court: The Court will allow it. It is a matter for the Jury, too.

Mr. Faulkner: Exception.

Mr. Hippeli: Q. Do you recall any other conversation with Mr. Nix, say shortly before Mr. Nix left Nye & Nissen? A. Yes, he told me——

Q. When was it, please?

A. This was about the beginning of 1942. [697]

Q. Where was it?

A. About January, I guess. 324 Townsend.

Q. Who was present then?

(Testimony of Henry Lester Pineda.)

A. Mr. Nix and myself.

Q. What was said?

Mr. Faulkner: We object to that as hearsay and not binding upon the defendants, your Honor, not a conversation pursuant to a conspiracy nor to further its object, a conversation between Mr. Nix about to leave the employ of someone and this witness. It is not the type of conversation that would be admissible, nor is Mr. Nix on trial.

Mr. Hippeli: I think for your Honor to rule on the objection you would have to know the conversation. The conversation pertains to an act, a course of conduct that was done during the course of the conspiracy. We submit that it was being done pursuant to the conspiracy, and when a conspiracy is established, it is binding on all the defendants.

The Court: He is not a defendant.

Mr. Faulkner: I can show your Honor at least three Circuit Court Decisions——

Mr. Hippeli: I think he is a co-conspirator. The act of one co-conspirator will be the act of all co-conspirators and will bind all the co-conspirators.

The Court: It is now four o'clock. I will let you discuss that in the absence of the jurors. The Jury may be excused and return at ten o'clock tomorrow morning.

(The Jury was excused, and in their absence a discussion [698] between the Court and counsel took place, after which an adjournment was taken until tomorrow, January 25, 1946, at 10:00 a.m.) [698-a]

Friday, January 25, 1946, 10:00 o'clock a.m.

The Clerk: United States v. Nye & Nissen.

Mr. Pratt: I will call Mr. Donald. If the Court please, the Government is calling this witness out of order, owing to the fact he is going necessarily away from San Francisco.

Mr. Faulkner: Very well.

ALEXANDER DONALD,

called as a witness by the Government; sworn.

The Clerk: Q. Will you state your full name?

A. Alexander Donald.

Direct Examination

Mr. Pratt: Q. Will you state your name, please?

A. Alexander Donald.

Q. Your home, Mr. Donald?

A. Woodside, San Mateo County.

Q. Here in San Francisco, or this vicinity?

A. Yes.

Q. During the years 1943 and 1944, did you occupy a position with the Government of the United States?

A. I did in the latter half of 1943 and the full year 1944.

Q. What was that position?

A. It was regional representative, Food Control Division of the War Shipping Administration.

Q. Your headquarters were where?

(Testimony of Alexander Donald.)

A. In San Francisco, 220 [699] Bush Street.

Q. In that capacity what, if anything, did you have to do with the supplying of food products and the ships being operated by the War Shipping Administration?

A. We supervised and expedited subsistence stores for the vessels and promulgated some regulations as to the quality, the quantity, the grade and for forth that went on the vessels.

Q. In that connection, were you in contact with suppliers of food products to be delivered to the ships in this area?

A. Yes, sir, inasmuch as through the War Food Administration we had licensed suppliers for restricted, designated and set-aside products.

Q. In that connection were you in contact with the corporation Nye & Nissen? A. Yes.

Q. Were you in contact with any of its officers? A. Yes.

Q. With which of its officers were you so in contact?

A. Mostly with Mr. Smith and at times with Mr. Moncharsh.

Q. Mr. Smith, Mr. J. J. Smith? A. Right.

Q. Do you know what his position was with the company?

A. I believe he was the vice-president.

Q. And with Mr. Moncharsh, you say, Mr. Abraham Moncharsh? A. At several times.

Q. What was his position with that company?

(Testimony of Alexander Donald.)

A. I believe he was the head of the company.

Q. In connection with those functions, did you have occasion [700] to issue directives or instructions to these suppliers of food products for the boats? A. I did.

Q. How were those instructions or directives issued? A. Orally and in writing.

Q. When they were issued orally in what manner was that done?

A. Usually in a meeting of the suppliers of a certain classification of products.

Q. Do you recall any such meeting that was held in the month of December, 1943?

A. Our office record shows a meeting on December 14, 1943.

Mr. Pratt: I am offering for identification a piece of paper on which there is the heading "Butter meeting 12/14/43, 2 P.M.," with the names of certain persons, certain supplying concerns following that heading.

(The document was marked U. S. Exhibit 70 for Identification.)

Mr. Pratt: At this meeting on December 14, 1943, do you have an independent recollection of whether anyone representing Nye & Nissen was present?

A. I believe Mr. Smith and Mr. Moncharsh were present at that meeting.

Q. The paper I am handing you, which is

(Testimony of Alexander Donald.)

marked 70 for Identification, is that paper part of the regular records of your office? A. Yes.

Q. Kept in the regular course of business?

A. Yes.

Mr. Pratt: I offer this in evidence. [701]

Mr. Faulkner: We object to the paper in evidence, your Honor, as hearsay as to the defendants. The witness has testified that apart from the paper he remembered they were at the meeting.

Mr. Pratt: Part of the regular records of the company which substantiate the recollection of the witness. I believe it is admissible.

Mr. Faulkner: This is not an action on an open book account where the Emporium is suing somebody on a certain contract——

Mr. Pratt: I don't care to argue it. I will withdraw it.

Mr. Faulkner: Fine.

Mr. Pratt: I have no doubt——

Mr. Faulkner: Fine.

Mr. Pratt: If the Court please, it is quite an annoyance to have counsel standing right here at my elbow. It seems to me he ought to sit down.

Mr. Faulkner: When I sit down I cant see the witness and I can't hear the witness.

The Court: Well, the difficulty is I know his hearing is impaired. I have been very patient and I trust that you will. I think we can get along.

Mr. Pratt: I didn't know he was hard of hearing.

The Court: That is true.

(Testimony of Alexander Donald.)

Mr. Pratt: Q. At this meeting on the 14th of December, 1943, at which the defendant Moncharsh and Mr. Smith, of the [702] Nye & Nissen Company were present, what, if any, instructions were given by you to those persons in regard to the inspection of eggs?

Mr. Faulkner: We will object to that as incompetent, irrelevant, and immaterial, and not within the issues. There is no law or requirement that has been introduced in evidence which would show that instructions given by the witness to a supplier of eggs, butter, would have to be followed.

The Court: I will allow it as a preliminary question. Overruled.

Mr. Faulkner: Exception.

The Witness: A. I directed that inspections be held by the War Food Administration. At that time the inspections be made as close as to the time of delivery to the War Shipping Administration as possible.

Mr. Pratt: Q. When you speak of deliveries to the War Shipping Administration, to what do you refer, deliveries where?

A. Deliveries to the docks.

Q. To the docks where the ships were——

A. Were receiving stores.

Q. Were lying. What, if anything, further was stated in the way of instructions at that meeting relating to the inspection of eggs?

A. That inspection certificates should accompany the invoice to the various agents of the War

(Testimony of Alexander Donald.)

Shipping Administration and those inspection certificates be evidence [703] of the quality, the grade, the condition of the products that were delivered to the docks.

Q. Under the directions which you gave at that meeting was anything said as to where this inspection should take place?

A. The inspection necessarily had to take place at the plant of the supplier.

Q. Was anything said as to when such an inspection should take place?

A. The inspection should take place as close to the time of delivery of the products to the dock as possible.

Mr. Pratt: Cross-examine.

Cross-examination

Mr. Faulkner: Where are the written records you were going to produce? You said you were going to put—you were going to produce some records.

Mr. Pratt: I said yesterday that I expected to produce a paper which was sent to the defendants. I thought that that particular paper—the proof is not sufficient that it went to them. It went to the general agents in charge of the vessel but whether it went to the suppliers I don't know whether the proof is sufficient, but I will show you the paper if you would like it. Perhaps you got it, I don't know.

(Testimony of Alexander Donald.)

Mr. Faulkner: Yes.

Mr. Pratt: This paper is dated a month later than this meeting and I had anticipated yesterday that the proof would show that this particular paper, a copy of it was sent to these [704] suppliers. The proof in that connection I consider uncertain although I don't know now actually whether the paper went to them. Nevertheless, the instructions which were given at this meeting of December 14th precede and antedate this paper, so it is not important.

Mr. Faulkner: May the paper that Mr. Pratt just handed me be marked a defendants' exhibit for identification?

(The document was marked Defendants' Exhibit F for Identification.)

Mr. Faulkner: Q. Mr. Donald, did I understand your official position was regional director of a certain part of the War Shipping Administration? A. Regional representative.

Q. Regional representative?

A. Of the Food Control Division.

Q. What does that mean, that title?

A. I had charge of the food control division functions of the West Coast.

Q. For how long a period?

A. From December 8, 1943, until December 31, 1945.

Q. During the course of that time a meeting was held in 1943, was it? December 14, 1943?

(Testimony of Alexander Donald.)

A. Yes, sir.

Q. Did you preside at the meeting?

A. I did.

Q. Do you remember distinctly the presence of Mr. Smith? A. I do.

Q. And Mr. Moncharsh? A. I do.

Q. Do you remember distinctly the subject discussed, is that right?

A. Yes; not in detail, but in general. [70]

Q. What, in general, was the subject discussed at the meeting?

A. The subject discussed in the meeting was the method that the War Shipping Administration was then instituting to supply transports, dry cargo ships and tankers on the West Coast.

Q. What type of material?

A. Subsistence stores.

Q. At the meeting the various companies were engaged in what type of business?

A. At that meeting we called the butter suppliers together.

Q. Was butter the primary topic of conversation?

A. Under FDB it was the license regulation setting up the licensing of suppliers of butter and cheese, they were the two items, they were given quotas. Eggs were not under the regulations. We discussed eggs at the same time, however.

Q. In other words, during a certain part of the war period there were certain set-aside orders made and you would hold a certain percentage of

(Testimony of Alexander Donald.)

all of your material for the use of the armed forces?

A. Correct, or the proper governmental agency.

Q. Those were just directives that were issued in regular course, monthly, bi-monthly or whenever the spirit moved some agency?

A. Right.

Q. I understood you to say you gave some directive or suggestion to these suppliers in relation to inspections? A. That is correct.

Q. What was the direction you gave?

A. That the protection which the Government had was to see that the proper merchandise [706] was delivered to the vessel, was inspected by a qualified Government agency, which was the War Food Administration, and that we required them to use inspection certificates covering the delivery of subsistence stores to the vessels of our agency.

Q. Up to that time had the War Shipping Administration not required any inspections?

A. No, they had not required inspections.

Q. They did not?

A. Prior to that, sometime in the fall of 1943, maybe a month or two before, we were requiring inspections.

Q. You did not require inspections?

A. We were requiring inspections.

Q. For how long a period prior to this meeting.

(Testimony of Alexander Donald.)

to the best of your recollections, did you require inspections?

A. I think about ten days before this meeting we put out a notice requiring inspection on meat.

Q. I mean on butter.

A. There was no notification to the agents and the general agents prior to this notice, here, that inspection was required.

Q. Had a directive been issued by some agency of the War Food Administration at or about the time of this meeting and directing that you require suppliers to have inspections?

A. No. That information I brought with me when I came out on December 8th from Washington.

Q. The inspection was to be made as closely as possible to the time *of delivery, is that correct?*

A. Correct. I might [707] add the reason inspection had not been carried on before was that no provision had been made in the general agency agreement to pay for the inspection. From this time we arranged that the Government should pay the inspectors for their work.

Q. The inspection required was done in the place of origin of the merchandise or at the point of delivery?

A. It would have been preferable to have it at the point of delivery, but due to the manpower situation at the time we had to narrow the places of inspection, we had to do some at the suppliers' plants.

(Testimony of Alexander Donald.)

Q. Did the direction you issued require the inspection to be at the point of delivery?

A. No.

Q. It would be preferable?

A. Would be preferable if possible.

Q. At all times from then on the War Shipping Administration or any Governmental agency had it observed that right to inspect at the point of delivery on all occasions?

A. Not any Governmental agency.

Q. I mean any agency that was authorized to inspect for the War Shipping Administration was entitled to inspect merchandise at the point of delivery?

A. That was the War Food Administration, yes.

Q. The War Food Administration, but the War Shipping Administration for the ships involved was not required to accept any merchandise that did not pass inspection at the point of delivery if it was to be inspected there? A. Yes. [708]

Q. A suggestion was made that it was an accommodation to the War Shipping Administration that inspections be made at the point of origin as the Government desired?

A. At the point where the merchandise was to be put on trucks for delivery.

Q. The desire indicated by you to these companies was to the effect that it would be preferable that the inspection be as close to the time of delivery as possible? A. Yes.

(Testimony of Alexander Donald.)

Q. And an inspection certificate be sent to the War Shipping Administration?

A. No, the general agent, not to the ship, to the general agent.

Q. To the general agent. From then on, although that direction existed, it was never required to be fulfilled with exactness by the administration, was it?

A. Yes, it was required.

Q. Did you insist upon certificate of inspection to accompany every shipment of merchandise purchased by any purchasing agency of the War Shipping Administration?

A. Any merchandise purchased by a general agent of a perishable nature, yes.

Q. You required that that be complied with to the letter?

Q. We required it to be complied with but the job was pretty large, we could not be charged with that.

Q. Yes, and you know it was not even complied with in principle and letter and was not even approached by anyone in the business from the time of your meeting on?

A. You may remember at that time that our job in this country was to get troops out there to stop the Japs, and not to do all the paper work.

Q. That is exactly right. At that time the pressure was great on the War Shipping Administration, not only your department, but the pressure was also great upon the people the War Shipping

(Testimony of Alexander Donald.)

Administration were trying to get accommodations from? A. Yes.

Q. You know, do you not, at all times that although the order was explicit in its wording, that the industry and the War Shipping Administration didn't observe it to the letter, you know that?

A. We did. However, most exceptions were by permission from either our office or from the inspector's office, if they could not get the quality of merchandise. I think you will find that is almost a general rule.

Q. Did you fix the time within the order of inspection at the place of delivery that you thought would be close to the place of delivery?

A. The War Food Administration inspectors advised that if they had 24 hours' notification they could make the inspection.

Q. You don't know whether on some of your ships they were given 24 hours, do you?

A. I would say the majority of the cases, yes.

Q. That would be true, but there were other instances where you hardly gave any time, isn't that right? A. Well, that was very.—

Q. But it would occur?

A. Those were special target ships.

Q. Do you know anything about whether or not Nye & Nissen [710] supplied the general agents inspection certificates? A. No.

Q. The inspection certificate that was required in respect to butter or eggs was a certificate gen-

(Testimony of Alexander Donald.)

erally issued by a member of the Department of Agriculture, wasn't it? A. That's right.

Q. That was an agency that you had indicated at that meeting was to make these inspections?

A. Correct.

Q. And the Army made inspections for War Shipping?

A. The Veterinary Corps of the Army is charged with seeing that the food is satisfactory. They further asked to have inspections made on all vessels carrying 50 or more military personnel.

Q. Did you indicate at that meeting that an Army inspection would be agreeable for a delivery to the War Shipping Administration?

A. No, because the problem had not come up at that time.

Q. The War Shipping Administration, did it not issue a directive other than this document which is Defendants' Exhibit K for Identification, didn't the War Shipping Administration reduce to writing the matter of when inspection was to be required and when it was not?

A. I believe that came at a later date.

Q. Within, say, 30 days of your meeting wasn't there a directive issued by War Shipping Administration covering the entire field that you talked about at that meeting?

A. I have been unable to find that in our file.

Q. It is not a matter of whether you could find it or not; do you remember a directive being issued?

A. No, I do not.

(Testimony of Alexander Donald.)

Q. Do you remember ever seeing one?

A. No.

Mr. Faulkner: I think that is all, your Honor.

Q. On frequent occasions during the period of time that you held the position which you have described with the War Shipping Administration you phoned the firm of Nye & Nissen and told them there was an emergency in the provisioning of ships, didn't you?

A. I imagine so. We had those emergencies at all times. I can't remember definitely.

Q. And you requested them on those occasions to do everything they could to help provision the ships within the field of the commodity they were selling, isn't that right? A. Correct.

Q. They always did it, did they not?

A. So far as I know.

Q. In any of those discussions about an emergency loading of a ship did you ever talk about an inspection or insist upon an inspection at the point of origin?

A. I don't quite get the question, sir.

Q. When these emergencies would arise and you would phone the firm of Nye & Nissen to come to the assistance of the War Shipping Administration to get the immediate food commodities for a ship in a hurry, in an emergency, and they would say that they would do it, would you have any discussion at all about an inspection?

A. There have been instances—I do not remember whether they were with Nye & Nissen or not

(Testimony of Alexander Donald.)

—where a delivery [712] might be held up waiting for an inspector. In such a case we would waive inspection.

Q. Many times you waived inspection, didn't you? A. Very few.

Mr. Pratt: He did not say that.

Mr. Faulkner: Q. Did you waive inspection at any time of Nye & Nissen?

A. That I wouldn't remember.

Q. Isn't it a fact that when these emergencies were arising the primary purpose was to victual the ship, provision the ship and get it out of here as fast as possible? A. That is correct.

Q. And at that time all of the industries similar to the Nye & Nissen Company were giving a greater part of their materials on contracts already in existence to various war agencies, isn't that right?

A. I do not know of the amounts, no.

Q. I mean it was difficult to have an emergency order filled, isn't that correct, because of the demands upon the sources of supply?

Mr. Pratt: I object to this unless it is related in some way to deliveries by Nye & Nissen.

Mr. Faulkner: I will submit the objection.

The Court: Read the question.

(Question read.)

The Court: Confine it to the issues here involved. What may have occurred elsewhere we are not concerned with here.

Mr. Faulkner: The purpose of the original tes-

(Testimony of Alexander Donald.)

timony of the witness was to show that there was in existence a directive of [713] some kind that bound the industry and therefore bound Nye & Nissen.

The Court: Develop the facts.

Mr. Faulkner: I want to show at that time that that directive was not an important feature of binding either the War Shipping Administration or the industry. In many, many instances where the desire of the War Shipping Administration and the purveyor of the merchandise was to provision a ship right then and there, they did not care about inspection at all. They wanted that ship filled.

The Court: Reframe your question.

Mr. Faulkner: Q. At the time that you were the regional representative of the War Shipping Administration is it not a fact that occasions arose, and many of them with the firm of Nye & Nissen, in which your desire was to provision a ship right then and there?

A. I do not remember how many there were. I do not think there were many, sir.

Q. But you do know there were some?

A. I imagine there were one or two at least.

Q. And you know, do you not, further that in those instances, or, rather, in many of those instances inspection was waived?

Mr. Pratt: I object to that.

Mr. Faulkner: Q. Is that not true?

A. No.

(Testimony of Alexander Donald.)

Mr. Pratt: He has answered.

Mr. Faulkner: Q. You say no? A. No.

Q. Did you ever waive inspection of Nye & Nissen? A. I would not remember that, sir.

Q. You have no recollection on the subject?

A. I know that we have waived inspections, but this is two years ago and I cannot remember the exact firms that we waived the inspections with.

Q. You know that you waived the inspections of firms dealing in the same commodity as Nye & Nissen? A. That is correct.

Q. They were all supplying butter, eggs and cheese to various vessels, were they not?

A. That is correct.

Q. Pardon me. A. That is correct.

Q. When you talked to Nye & Nissen to get them to come to the assistance of the War Shipping Administration for the provisioning of a ship just as soon as possible, who would you talk to?

Mr. Pratt: I object to that. That is assuming something not in evidence.

Mr. Faulkner: He said he talked to them at least twice.

Mr. Pratt: No, he did not say that. He said he had no recollection of any waiver of inspection so far as Nye & Nissen are concerned, and it might possibly have occurred once or twice.

Mr. Faulkner: I did not ask him anything about waiver of inspection. I asked him about phoning Nye & Nissen for the purpose of getting an immediate provisioning of a ship.

(Testimony of Alexander Donald.)

The Court: Q. Do you recall that?

A. No, I cannot remember calling Nye & Nissen at any specific time.

Mr. Faulkner: Q. Do you remember ever talking to Jack Smith [715] about getting a ship provisioned right away?

A. Certainly I have talked to Jack Smith about it.

Q. On that subject?

A. On the question of whether he had or had not the supplies.

Q. Yes?

A. I might add here the position of the War Shipping Administration was this for the two-year period: We did not care whether anybody wanted to supply the ships or not, but if they wished to be in the business of supplying ships, we expected them to give us a fair share of the products. That was always the basis of our conversation. We would give the order to somebody else if they did not want to do business with us.

Q. That was due to the fact, was it not, that the War Shipping Administration was not in the same position as the Army was? The Army could sequester and take over. So in your dealings with the various companies the Army really had first chance, isn't that right?

A. In the early part, yes.

Q. And you wanted fair treatment from the dealer in respect to a fair apportionment to war,

(Testimony of Alexander Donald.)

shipping of the various commodities handled by the various companies?

A. Correct. As you may recall, in this period we are talking about the OPA ceilings had not been adjusted so that sales to the War Shipping Administration were not as profitable as sales to the domestic trade, and we did not have priorities at that time, so that our conversations were usually based on "You are in the business or you are out; give us our share if you want to stay in there." [716]

Q. And you got from Nye & Nissen, did you not? A. I should say yes.

Q. On that subject did you ever talk to Abe Moncharsh?

A. I can recall only once that I talked to Mr. Moncharsh.

Q. The rest of the times they were always with Jack Smith? A. That is right.

Mr. Faulkner: Would your Honor indulge me one moment?

Q. Now, the usual circumstances under which you would phone Nye & Nissen to get supplies was where some other company in the business had contracted to fill an order and had failed to fill it, and you would then go and phone Jack Smith to help you out, isn't that about right?

A. Not necessarily, sir.

Q. Wasn't that a frequent occurrence?

A. No more with Nye & Nissen than it was with

(Testimony of Alexander Donald.)

the other firms helping Nye & Nissen out, which we also arranged.

Q. Do you know of any occasion where Nye & Nissen failed to produce and fill an order in accordance with their commitment to the War Shipping Administration?

A. I know of some instances that we could trace if it was necessary where we have gotten other suppliers in town to assist Nye & Nissen in filling their orders. They were unable to fill their orders if War Shipping Administration had not assisted them.

Q. Do you know of any instance where a commitment was made to supply a particular quantity of merchandise at a particular time where Nye & Nissen fell down?

A. Not with the assistance that [717] was rendered them by the other suppliers in town, no sir.

Q. They are the only company in San Francisco who had a record where they had never failed to fulfill an order, regardless of how they did it, isn't that correct? A. No, sir.

Q. What other company had a similar record?

A. O. Casperson poultry producers.

Mr. Faulkner: I think that is all.

Redirect Examination

Mr. Pratt: Q. You spoke of difficulties in connection with the securing of subsistence stores from time to time?

A. Yes, sir.

Q. From suppliers of eggs, butter and cheese?

(Testimony of Alexander Donald.)

A. Right.

Q. And those difficulties arose from what reason?

A. Well, there were instances in our opinion where we were not getting our share of the various commodities due to price differentials. At those times we used to call the suppliers and plead with them to give us supplies for the troops going out on the transports.

Q. And did you get cooperation in that manner, complete cooperation from these concerns?

A. With some, yes. With some, no.

Q. With Nye & Nissen?

A. I would say that Mr. Smith had always given us cooperation when he was there.

Q. When he was not there then what?

A. We used to have a few arguments every now and then.

Q. With whom did you have these arguments?

A. I cannot remember the name of the other man at Nye & Nissen. I could refresh [718] my mind from my notes in my office?

Q. Do you have the notes here?

A. No, at my office.

Q. You mentioned the fact that you had a conversation on one occasion with Mr. Moncharsh in relation to the supplying of subsistence supplies?

A. That is correct.

Q. When was that?

A. I do not know what the date of that was.

Q. What was the subject of that conversation with Mr. Moncharsh?

(Testimony of Alexander Donald.)

A. We had suggested that through the various firms they notify us and Customs of deliveries, the date of the delivery and the time of the delivery to the vessels. All the other suppliers were notifying us and Nye & Nissen were not notifying us at the time.

Q. And the conversation was on that subject, was it? A. That is correct.

Q. What was it, do you recall?

A. Mr. Moncharsh, I believe, as I recall it, said that this was merely a suggestion and it was not a directive or an order. My office was accustomed to putting out suggestions. We were dealing with business firms. We were not ordering people around as a bureaucracy, and so we requested Mr. Moncharsh to comply with our suggestions or we would have to put out a directive.

Q. And what was his reply to that?

A. That if we wanted it that way, in the form of a directive, if we wanted it that way, all right, he would notify Customs. [719]

Q. Do you mean as far as an oral representation or a request was concerned, he would not comply?

A. He did comply after the telephone conversation but he was not complying with the written suggestion.

Q. In connection with the delivery of supplies by Nye & Nissen to ships at the waterfront did you receive any complaints with regard to the character of their deliveries?

Mr. Faulkner: We object to that as not binding on the defendants.

(Testimony of Alexander Donald.)

Mr. Pratt: We are talking about Nye & Nissen, which is a defendant.

Mr. Faulkner: Some statement that some other person made to this witness.

The Court: Read the question, Mr. Reporter.

(Question read.)

Mr. Pratt: The door was open for this question.

The Court: You may answer yes or no.

Mr. Zirpoli: Exception.

Mr. Pratt: Q. You may answer, Mr. Donald.

The Court: Limit your answer to yes or no.

A. No.

Mr. Pratt: Q. You received no complaints. Now, so far as inspection certificates are concerned, an inspection certificate by the general agent was required before payment would be approved by War Shipping Administration to the general agent. [720] is that right?

A. That was the instructions that were out to our auditing department. That is on perishable merchandise.

Mr. Pratt: That is all, your Honor.

Recross Examination

Mr. Faulkner: Q. The matter of payment based upon inspection certificates, all of that was a matter of contract, wasn't it, between the shipping company and the War Shipping Administration?

A. The contract was with the United States of America War Shipping Administration. The contract was with the Government.

(Testimony of Alexander Donald.)

Q. What I mean is this: when a shipping company, like Matson Navigation, General Steamship, or the Dollar Lines, operated these various vessels under the War Shipping Administration, they had a contract, isn't that right?

A. They were a contract agent of ours, yes.

Q. And whatever the contract provided with respect to the payment was the manner in which they would be paid, isn't that right?

A. I didn't quite understand that question.

Q. The contract would be in writing and it would provide when the shipping company would get paid, isn't that correct?

A. That is correct.

Q. And that is the way they were paid presumably, isn't it, the way the contract provided?

A. The way the contract provided, yes, sir.

Q. And the auditing department or an individual could not change that?

A. Well, on our bare boat G. A. charter we paid against [721] invoice for the supplier; we paid the actual invoice. Though the operator signed the check, we reimbursed the joint account.

Q. The bare boats?

A. On a bare boat charge, yes.

Q. What kind of boats are those?

A. That is the general agency agreement under which most of the operators ran the vessel.

Q. It is not a class of boat——

Mr. Pratt: I would like to have the answer completed. You interrupted.

(Testimony of Alexander Donald.)

The Witness: That was a class of charter, called a bare boat charter, which gave us the vessel. We paid for the wages of the crew. We paid for the subsistence stores, all the gas, fuel oil—everything that went on the ship. All we got was the hull of the ship and the permanent attachments.

Mr. Faulkner: Q. That is all provided for in the contract, isn't it?

A. That is all provided for in the contract. We reimbursed the general account or the joint account which the Government and the agent had set up on audited invoices. In other words, they would not get the money that went out of the account, the agent would not get the money that went out of the account on payment to Nye & Nissen until our auditor audited the invoice.

Q. Whatever that method was which you have given us a fair description of, that is all set up in the agreement, isn't it? A. That is right.

Mr. Faulkner: That is all.

Further Redirect Examination

Mr. Pratt: Q. In connection with the supplying of subsistence supplies to these boats, the Government paid all the bills, did they not?

A. On the G. A. charter ships.

Q. On the what?

A. On the G. A. charter ships. That is on the General Agency ships.

Q. Everything was paid by the Government?

A. That is right.

(Testimony of Alexander Donald.)

Mr. Pratt: That is all.

The Court: I understand this witness wishes to leave.

Mr. Pratt: Yes, your Honor.

The Court: Is that agreeable to both sides?

Mr. Pratt: I think it is, your Honor. The witness is excused permanently.

Mr. Faulkner: That is right.

The Court: Very well, he may be excused.

HENRY LESTER PINEDA

recalled;

Direct Examination—(Resumed)

By Mr. Hippeli:

Q. Mr. Pineda, in your presence did any of the defendants ever use the stamp of a Government inspector when that Government inspector was present at the plant? A. Yes.

Q. Will you select a specific instance in which this was done, please, and tell us the time of that instance? A. Well, in 1941. [723]

Q. What part of 1941?

A. Well, about the fall of 1941.

Q. Who was present on this occasion?

A. Mr. Goddard, Mr. Menges and myself.

Q. Were any Government inspectors present?

A. Yes, they were in the candling room.

(Testimony of Henry Lester Pineda.)

Q. Which inspectors were they, Army or Department of Agriculture? A. Army.

Q. Was any conversation had at any time?

A. Well, the Army inspectors were inspecting the eggs and Mr. Goddard asked him if it was all right for him to start stamping the cases of eggs.

Q. And what was done?

A. The inspector handed out his stamp and pad and we started to stamp the cases of eggs.

Q. Who? A. Mr. Goddard and myself.

Q. Which cases of eggs did you stamp?

A. We stamped some cases of eggs that did not belong to the lot of the army men, and then we stamped some labels.

Q. Who stamped the labels?

A. Mr. Goddard stamped the labels and I turned the labels for him.

Q. Were the labels on any cases? A. No.

Q. Were any of the cases in the lot from which the Army inspector had selected samples stamped?

A. Yes, they were.

Q. What was done with the cases which you stamped which were not in the lot from which the Army inspector had selected a sample?

A. When the order was delivered these eggs were placed with that order. [724]

Q. What was done with the labels which were stamped?

A. I took them into the butter room. We had a shelf there, and we placed them on the shelf.

Q. Who told you to do that?

(Testimony of Henry Lester Pineda.)

A. Mr. Goddard.

Q. What was done with these labels?

A. About two or three days later Mr. Goddard asked me where I had placed the labels. He took them and placed them on some cases of eggs.

Q. Were those cases inspected? A. No.

Q. What was done with these cases?

A. They were shipped out.

Q. Have you ever buffed a Government inspection stamp from a case of eggs? A. Yes.

Q. When was this done?

The Court: Read the question.

(Question read.)

The Court: What do you mean by that?

The Witness: Buffed—scrape if off.

The Court: Proceed.

Mr. Hippeli: Q. When was this done?

A. This was done in the early part of 1942.

Q. Was it done on more occasions than that?

A. Oh yes, did that all the time I was working down at Nye & Nissen's.

Q. Will you select a particular occasion on which it was done?

A. One of the last times I remember was about 1942.

Q. What part of 1942?

A. Around January.

Q. Where? A. At 324 Townsend. [725]

Q. Who was present?

A. There was Mr. Goddard, Mr. Menges and myself, and Mr. Nix.

(Testimony of Henry Lester Pineda.)

Q. Was any conversation had at this time?

A. I was told to wait until the girls——

Q. Who told you this now?

A. Mr. Goddard.

Q. What was the conversation, please?

A. I was told to wait until the girls left——

Mr. Faulkner: This all goes in subject to our objection and motion, your Honor.

Mr. Hippeli: Q. Will you tell us what happened at that time?

A. I was told to wait until the girls went home and then to bring these cases down and start buffing, and make sure I didn't put any label—or any of the labels or any of the wood that was buffed inside the cases of eggs, because they were going to be examined again by Mr. Mossman.

Q. What were you buffing?

A. The Government stamp off.

Q. What stamp?

A. The Department of Agriculture stamp.

Q. Where was that stamp?

A. On the cases of eggs.

Q. On what part of the case?

A. Where the label is.

Q. Would it be on the case anywhere than on the label?

A. Sometimes it would be on the cleat of a case.

Q. If it was on the cleat of the case what would you do?

A. We would buff it off with the buffer.

Q. Who would? A. I would.